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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~809.~~ ~~300~~ 100

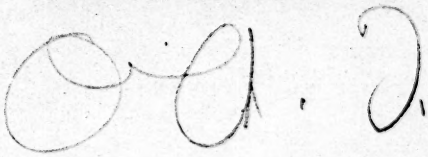
FREDERICK SCHULENBERG, ADOLPH BOECKELER, AND LOUIS HOSPES, PARTNERS AS SCHULENBERG, BOECKELER & COMPANY, PLAINTIFFS IN ERROR,

VS.

SAMUEL HARRIMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED DECEMBER 23, 1872.



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SUPREME COURT OF THE UNITED STATES.

No. 609.

FREDERICK SCHULENBERG, ADOLPH BOECKELER, AND LOUIS HOSPES, PARTNERS AS SCHULENBERG, BOECKELER & COMPANY, PLAINTIFFS IN ERROR,

vs.

SAMUEL HARRIMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States in and for the district of Minnesota, greeting:

Because, in the record and proceedings, and also in the rendition of the judgment in a suit before you, or some of you, between Frederick Schulenberg, Adolph Boeckelor, and Louis Hospes, partners, as Schulenberg, Boeckelor & Co., plaintiffs, and Samuel Harriman, defendant, in a plea which is in said circuit court, manifest error hath happened, to the great damage of the said plaintiffs, as they say: And, it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be there and there held, that, the record and proceedings being then inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in said district of Minnesota, this 21st day of August, A. D. 1872.

[SEAL.] H. E. MANN,
Clerk of the U. S. Circuit Court, Dist. of Minnesota.

JOHN B. BRISBIN &
E. C. PALMER,
Att'ys for Pl'ffs in Error.

2 The answer of the judges of the circuit court of the United States for the district of Minnesota, in the 8th circuit, in the within writ mentoned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the Justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within is commanded.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 14th day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

[SEAL.] H. E. MANN,
Clerk of the United States Circuit Court, District of Minnesota.

(Indorsed:) United States circuit court, district of Minnesota. Frederick Schulenberg et al. vs. Samuel Harriman. Writ of error. John B. Brisbin & E. C. Palmer, att'ys for pl'ffs in error.

3 UNITED STATES OF AMERICA, *ss:*

TO SAMUEL HARRIMAN, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first

Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein Frederick Schulenburg, Adolph Boekeler, & Louis Hospes, partners, as Schulenberg, Boeckeler & Co., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgement in said writ of error mentioned sho'ld not be corrected, & speedy justice should not be done to the parties in that behalf.

Witness the Honorable John F. Dillon, one of the judges of the circuit court of the United States for the district of Minnesota, this 17 day of August, in the year of our Lord one thousand eight hundred and seventy-two.

JNO. F. DILLON, [SEAL.]
One of the Judges of the Circuit Court of the United States for the District of Minnesota.

JOHN B. BRISBIN,
E. C. PALMER,
Attorneys for Pl'ffs in Error.

4 (Indorsed:) U. S. circuit court. Schulenberg, Boeckelor & Co., pl'ffs in error, vs. Samuel Harriman, def't in error. Citation.

We, the attorneys of record for the defendant in error, in the above-entitled action, do hereby admit due personal service of a copy of the within citation, on the 22nd day of August, A. D. 1872, at St. Paul, county of Ramsey, State of Minnesota.

DAVIS & O'BRIEN,
Att'ys for Def't in Error.

Filed August 22, 1872.

H. E. MANN, *Clerk.*

5 *Schedule in return mentioned.*

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.
vs.
SAMUEL HARRIMAN.

Pleas before the honorable the judges of the circuit court of the United States of America for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that, on this 16th day of October, in the year of our Lord one thousand eight hundred and seventy-one, came the defendant, by Messrs. Davis & O'Brien, his attorneys, and filed in the clerk's office of said court the return of the clerk of the district court of the first judicial district, county of Washington, and State of Minnesota, upon the removal of said cause from said court; which return is in the words and figures following, viz:

6 STATE OF MINNESOTA,
District Court, Washington County:

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
against
SAMUEL HARRIMAN.

The petition of Samuel Harriman respectfully shows to this court—

That this petitioner is defendant in the above-entitled action, now pending in this court, and that he is a citizen of the State of Wisconsin.

And the plaintiff, in the above-entitled action, is a citizen of the State of Minnesota.

And that the matter in dispute in said action exceeds the sum and value of five hundred dollars, exclusive of costs, as by the summons and complaint therein, to which petitioner craves leave to refer, will more fully appear.

Wherefore this petitioner prays that the said action may be removed for trial into the circuit court of the United States for the district of Minnesota, next to be holden, according to the act of Congress in such case made and provided.

DAVIS & O'BRIEN,
7 *Attorneys for Petitioners, Saint Paul, Minn.*

WASHINGTON COUNTY, *ss:*

Samuel Harriman, being duly sworn, says that he is the petitioner, named in the foregoing petition; that he knows the contents of said petition, and that said petition is true.

SAM. HARRIMAN.

Sworn to and subscribed before me this 19th day of June, A. D. 1871.

[SEAL.] W'M. M. McCLUER,
Notary Public, Washington County, Minn.

STATE OF MINNESOTA,
District Court, Washington Co.:

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler, & Co.,
against
SAMUEL HARRIMAN.

SIRS: Please take notice that the defendant in the above-entitled action, appears therein; and you will further take notice that the said defendant has this day filed his petition in said action, (a copy of which is herewith served upon you,) for the removal of said ac-
8 tion into the circuit court of the United States for the district of Minnesota, next to be holden, and also has offered the security required in the premises, and that the said defendant will apply to this court, at the court-house in the city of Red Wing, in the county of Goodhue, on the 11th day of July, A. D. 1871, at the opening of the court on the said day, or as soon thereafter as counsel can be heard for the hearing of said petition, and the granting of the proper order therein.

Dated June 26th, A. D., 1871.

Yours, &c.,

DAVIS & O'BRIEN,
Attorneys for Defendant, St. Paul, Minn.

To W'M M. McCLURE, &
BRISBIN & PALMER,
Attorneys for Plaintiffs.

STATE OF MINNESOTA,
District Court, Washington County:

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler, & Co.,
against
SAMUEL HARRIMAN.

Know all men by these presents that we, U. L. Lamprey and W'm A. Spencer, of Saint Paul, in the State of Minnesota, are held and
9 firmly bound unto Frederick Schulenberg, Adolph Boeckler, and Louis Hospes, partners, as Schulenberg, Boeckler & Co., in the sum of five hundred dollars, to be paid to the said Schulenberg, Boeckler & Co., their executors, administrators, or assigns; for which payment well and truly be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated this 26th day of June, 1871.

The condition of the above obligation is such, that if the defendant, Samuel Harriman, shall and do well and truly enter in the circuit court of the United States, for the district of Minnesota, on the first day of its next session, copies of the process against him in said action, and shall and do there appear therein, pursuant to the 12th section of the Judiciary Act of 1789, of the United States, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

U. L. LAMPREY. [L. S.]
W'M A. SPENCER. [L. S.]

Signed and sealed in the presence of—
C. K. DAVIS.
C. D. O'BRIEN.

STATE OF MINNESOTA, *Ramsey County, ss:*

10 On this 26th day of June, A. D. 1871, before me, personally came U. L. Lamprey and W'm A. Spencer, to me known to be the same persons described in and who executed the foregoing instrument, and acknowledged that they executed the same for the uses and purposes therein expressed.

[SEAL.] H. R. BRILL,
Notary Public, Ramsey Co., Minn.

STATE OF MINNESOTA,
Ramsey County, ss:

U. L. Lamprey and W'm A. Spencer, being duly sworn, doth each for himself say that he is a resident and freeholder of said State, and is worth the sum of one thousand dollars above his debts and liabilities and exclusive of his property exemp' from execution.

URI L. LAMPREY.
W'M A. SPENCER.

Sworn to and subscribed before me this 26th day of June, A. D. 1871.
[SEAL.] H. R. BRILL,
Notary Public, Ramsey Co., Minn.

I hereby approve the foregoing bond.

Filed June 26th, 1871.

H. WILSON, *Clerk.*

11 COUNTY OF WASHINGTON,
State of Minnesota:

District court, first judicial district.

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
against
SAMUEL HARRIMAN.

It is stipulated that the prayer of the petition heretofore filed herein for the removal of this cause into the United States circuit court for the district of Minnesota, may be granted without notice, and that the said State court may grant the order prayed for in said petition for such removal, and approve the security which has been offered.

Dated July 10th, 1871.

WM. M. McCLUER &
BRISBIN & PALMER,
For Pl'ffs.
DAVIS & O'BRIEN,
Defendants' Attorneys.

Filed July 19th, 1871.

H. WILSON, *Clerk.*

12 COUNTY OF WASHINGTON,
State of Minnesota:

District court, first judicial district.

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
against
SAMUEL HARRIMAN.

On reading and filing the petition, bond, and stipulation herein, it is ordered that the said bond be, and it is hereby, approved, and that this cause be, and it is hereby, transferred and removed from this court into the circuit court of the United States for the district of Minnesota, pursuant to the act of Congress, in such case made and provided.

Dated July 10th 1871.

By the court:

CHARLES McCLURE, *Judge.*

Filed July 19th, 1871.

H. WILSON, *Clerk.*

STATE OF MINNESOTA,
County of Washington, ss:

I, Harvey Wilson, clerk of the district court within and for said county, do hereby certify that I have carefully compared the annexed and foregoing transcript of files, in the case of Schulenberg, Boeck-
13 ler & Co. vs. Samuel Harriman, viz: petition and bond for removal of action to U. S. C. court; stipulation for removal of cause; and order of court for removal of cause, with the originals now on file in my office, and find it to be a true and correct transcript of the whole thereof, including all endorsements thereon; and that no other papers have been filed in said action.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Stillwater, in said county, this 2d day of September, A. D. 1871.

[SEAL.] HARVEY WILSON, *Clerk.*

[5 cts. U. S. I. R. canceled.]

14 And on the same day the said defendant, by his said attorneys, filed in the clerk's office of said court a copy of the summons and complaint in said action; which summons and complaint are in the words and figures following, viz:

15 District court first judicial district.

COUNTY OF WASHINGTON,
State of Minnesota:

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
against
SAM. HARRIMAN.
} Summons.

The State of Minnesota to the above-named defendant:

16 You are hereby summoned and required to answer the complaint in this action which is herewith served on you, and to serve a copy of your answer to the said complaint on the subscribers, at the office of W'm M. McCluer, in the city of Stillwater in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

District court.

STATE OF MINNESOTA,
County of Washington:

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
against
SAM. HARRIMAN.
} Complaint.

The complaint of the plaintiffs in this action shows to this court and states:

That said plaintiffs are the owners and entitled to the immediate possession of that certain personal property which is described as follows, that is to say:

All those certain pine saw-logs hereinafter described, to-wit:

17 Eight hundred and fifty-one thousand, six hundred and eleven (851,611) feet of logs, marked ⅄ ⅄ and ⅄ ⅄ (called severally Y girdle K 20, & Y girdle K 15;) also, eight hundred and twenty-nine thousand three hundred and eighty-six (829,386) feet of logs, marked ⅄ ◇ (called hook y diamond;) that, on the 17th day of June, 1871, these plaintiffs were in the lawful and peaceable possession of said personal property above

described, at the county of Washington, aforesaid; that said defendant on the day aforesaid, and at the place aforesaid, with force and arms, wrongfully and unlawfully took from the possession of these plaintiffs the above-described personal property, and all of the same.

That the same, all and singular, and the possession thereof, are wrongfully and unlawfully detained from said plaintiffs by said defendants, at the county of Washington, in the State aforesaid; that said plaintiffs have demanded and caused to be demanded of said defendant the delivery and possession thereof before the commencement of this action; but said defendant has refused and still refuses and neglects to deliver the same, or any part of the same to the plaintiffs; and
18 that the same is worth and of the actual value of eleven thousand, seven hundred and sixty-seven dollars.

And plaintiffs further aver that they are, and for more than one year last past have been, partners in business using the firm-name of Schulenberg, Boeckler & Co.

Whereupon said plaintiffs demand judgment against said defendant, for the immediate return and possession of the property above described or the sum of eleven thousand seven hundred & sixty-seven dollars, the value thereof, in case a delivery thereof cannot be had, and one thousand dollars damages for the detention thereof, besides the costs and disbursements of this action.

Dated June 19th, 1871.

W'M M. McCLUER AND
BRISBIN & PALMER.
Pl'ff's Att'ys.

STATE OF MINNESOTA,
County of Washington, ss:

W'm M. McCluer came before me personally, and being duly sworn, doth say that he is one of the plaintiffs' attorneys in the above entitled action; that the foregoing complaint is true, to the best of his knowledge, information, and belief, and that the reason why this verification is not made by one of said plaintiffs, is that plaintiffs are
19 absent from the county of Washington, Minnesota, where resides this affiant, their attorney.

W'M M. McCLUER.

Subscribed and sworn to before me, on this 19th day of June, A. D. 1871.

E. G. BUTTS,
Judge of Probate.

Filed October 16th, 1871.

H. E. MANN, *Clerk.*

And on the same day the said defendant, by his said attorneys, filed in the clerk's office of this court, a copy of the bond and affidavit in replevin, in said action, with the indorsements thereon; which bond and affidavits and indorsements are in the words and figures following, viz:

STATE OF MINNESOTA,
County of Washington:

District court, first district.

FREDERICK SCHULENBERG, ADOLPH BOECKLER, and Louis Hospes, partners, as Schulenberg, Boeckler & Co.,
vs.
SAMUEL HARRIMAN.

STATE OF MINNESOTA,
County of Washington, ss:

20 W'm M. McClure came before me personally, and being first duly sworn, doth say that he is one of the attorneys for said plaintiffs in the above entitled cause; that said plaintiffs are the owners and lawfully entitled to the immediate possession of that certain personal property, to recover possession of which this suit is brought, and which is described as follows, that is to say: all those certain pine saw-logs, described as follows, to wit: Eight hundred and fifty-one thousand, six hundred and eleven feet, board measure, of logs, marked ⅄K ; ⅄K; (called, severally, Y girdle K 20, and Y girdle K 15;) also, eight hundred and twenty-nine thousand, three hundred and eighty-six feet of logs, marked ⅄◇ (called hook Y diamond;) that the same is wrongfully detained from said plaintiffs by said defendant, at the county of Washington and State aforesaid; that the same has not been taken for a tax, assessment, or fine, or seized under an execution or attachment against the property of said plaintiffs, or either of them; and that the actual value of the aforesaid property is eleven thousand seven hundred and sixty-seven dollars; and further saith not.

W'M M. McCLUER.

Subscribed and sworn to before me, on this 19th day of June, A. D. 1871.

[SEAL.] E. G. BUTTS,
Judge of Probate.

(Indorsed:)

To the sheriff of the county of Washington, State of Minnesota:

SIR: You are hereby required to take the property described
21 in the within affidavit from the defendant in the within-entitled cause, and deliver the same to the plaintiff therein according to law.

Dated June 19, A. D. 1871.

Yours, &c,

W'M M. McCLUER &
BRISBIN & PALMER,
Plaintiffs' Attorneys.

Bond in replevin.

STATE OF MINNESOTA,
County of Washington:

District court, first judicial district.

FREDERICK SHULENBERG, ADOLPH BOECKLER, & Louis Hospes, partners, as Schulenberg Boeckler & Co.,
vs.
SAMUEL HARRIMAN.

Know all men by these presents that we, Frederick Schulenberg, as principal, and Henry Westing, as surety, are held and firmly bound unto Samuel Harriman, defendant in the above-entitled action, in the sum of twenty-three thousand eight hundred dollars, lawful money of the United States, to be paid unto the said Samuel Harriman, his heirs, executors, administrators, or assigns; for which payment, well and truly to be made,

we, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 19 day of June, A. D. 1871.

The condition of this obligation is such that whereas an affidavit
22 has been duly made in this action, that the said defendant wrongfully detains from said plaintiffs certain personal property therein described, of the value of eleven thousand seven hundred and sixty-seven dollars, and said plaintiffs claim the immediate delivery of said property to them according to the statute in such case provided:

Now, therefore, if the said plaintiffs shall prosecute said action with effect, and return said property to said defendant if a return is adjudged, and shall pay to him such sum as for any cause may be recovered against the plaintiffs, then this obligation shall be void; otherwise of force.

In testimony whereof we have hereunto set our hands and seals, on this 19 day of June, A. D. 1871.

FREDERICK SCHULENBERG. [SEAL.]
HENRY WESTING. [SEAL.]

Signed, sealed, and delivered in presence of—
A. C. SULL.

STATE OF MINNESOTA,
County of Washington, ss:

Be it known that, on this 19th day of June, A. D. 1871, came before me, personally, Frederick Schulenberg and Henry Westing, to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his own free act and deed.

[SEAL.] A. C. SULL,
Notary Public.

STATE OF MINNESOTA,
County of Washington, ss:

23 Henry Westing, upon oath, doth say that he is one of the sureties above-named; that he is a resident and freeholder of and in the State of Minnesota, and worth the amount of twenty-three thousand eight hundred dollars, specified in the foregoing bond, above his debts and liabilities and exclusive of his property which is exempt from execution.

HENRY WESTING.

Subscribed and sworn to before me, on this 19th day of June, A. D. 1871.

[SEAL.] A. C. SULL,
Notary Public.

Indorsed:

I hereby approve the within bond and the sureties thereon.
Dated June 19, 1871.

JOSEPH R. CARLI,
Sheriff of Washington County, Minn.

And afterwards, to wit, on this 16th day of October, A. D. 1872, came the said defendant, by his said attorneys, and filed in the clerk's office of

said court, his answer to the said plaintiffs' complaint in the words and figures, following viz:

24 United States circuit court, district of Minnesota.

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

The above-named defendant denies that the plaintiffs were ever the owners of any of the pine saw-logs or of any of the property described in the complaint.

He denies that the plaintiffs were ever entitled to the possession of any of the property described in the complaint.

He denies that the plaintiffs were ever in possession of any of the property described in the complaint, except the possession hereinafter stated, which the said plaintiff obtained of this defendant by execution of the process issued and executed in this action.

This defendant denies that he ever, at any time or place, with force and arms, or otherwise, wrongfully or unlawfully took from the possession of the plaintiffs any of the property described in the complaint, and of the other proceedings hereinafter stated.

He denies that he ever, at any time or place, wrongfully or unlawfully detained from the plaintiffs any of the property described in the complaint.

He admits that the plaintiffs did, as alleged in the complaint, demand of the defendant delivery and possession of said property.

He admits that he, the defendant, refused to deliver the said property or any part of the same to the plaintiffs.

He denies that the said property is worth and is of the actual value of
no more than eleven thousand seven hundred and sixty-seven dol-
25 lars, and alleges that the same is and has always been worth and of the actual value of twenty-five thousand dollars.

He denies that the plaintiffs have suffered damages in any sum whatever in the premises.

He denies each and every allegation of the complaint which is not by this answer admitted.

Further answering, the defendant alleges that he was, at the time of the commencement of said action, lawfully in the possession of all and singular the property described in the complaint, to which description reference is hereby made; that, at the time of the commencement of this action, to wit, on or about the 19th day of June, A. D. 1871, the said plaintiffs, at the county of Washington, in the State of Minnesota, caused and directed the sheriff of the said county, under and by virtue of the writs, and orders, and process which were issued and executed in and by the district court of the first judicial district of the State of Minnesota, for the county of Washington, while said suit was pending in said district court and before its removal into this court, to take, and the said sheriff then and there, in pursuance thereof, did take, from the aforesaid possession of the defendant, and then and there, pursuant to the directions of the plaintiffs, and the said writs, process, and proceedings, delivered to the said plaintiffs, all and singular the aforesaid property, and that all of said property was, on the day and year and at the place last above-mentioned, by the order and direction of the said plaintiffs, wrongfully taken by said sheriff out of the possession of this defendant and delivered to the said plaintiffs; and that the said plaintiffs have, ever since the time of such taking and delivery aforesaid, had and detained, and still have and detain all of said property in their possession; and, although

often requested and demanded by the defendant so to do, have al-
26 ways refused, and still do wrongfully refuse, to deliver the same to this defendant, to this defendant's damage two thousand dollars; that the actual value of said property so detained is twenty-five thousand dollars.

Whereupon the defendant demands judgment in this action against said plaintiffs for the return of all of said property to him, and in case a return cannot be had he demands judgment for the value of said property, in the sum of twenty-five thousand dollars, with interest on such value and damages, from the 19th day of June, A. D. 1871, and for costs and disbursements.

DAVIS & O'BRIEN,
Defendant's Attorneys, St. Paul, Minn.

DISTRICT OF MINNESOTA, *ss:*

C. K. Davis, having been duly sworn, deposes that he is one of the attorneys for the defendant above-named; that the foregoing answer is true, to the best of deponent's knowledge, information, and belief; that this verification is made by deponent instead of by defendant for the reason that defendant is absent from the county of Ramsey, wherein his above-named attorneys, Davis & O'Brien, reside.

C. K. DAVIS.

Subscribed and sworn to before me, this 24th day of July, A. D. 1871.
[SEAL.] I. N. CARDOZO,
U. S. Commissioner, Dist. Minn.

27 And afterwards, to wit, at the June term of this court, in the year, A. D. 1872, begun and held at the city of Saint Paul, in said district, on the 17th day of June, A. D. 1872, on the eighth day of said term, and the 25th day of said June, the following proceedings, among others, were had, to wit:

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

ANDREW SCHOW
vs.
SAMUEL HARRIMAN.

On motion of the defendant, by his attorney, the plaintiffs, by their attorneys, consenting thereto, ordered that these two cases be tried at the same time before the same jury.

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

This cause coming on to be heard, the parties appeared by their attorneys, and a jury being called came, to wit: E. P. Evans, E. L. Larpenteur, Howard Douglas, Truman Parker, B. F. Sheldon, Stephen Bullis, Alva Smith, Philander Sprague, L. Pomeroy, Henry Brown, C. L. Case, Daniel Sawyer, who are duly impannelled and sworn.

Case opened on the part of the plaintiffs by W'm M. McClure, one of their attorneys. The plaintiffs present their proofs and rest their case

28 Case opened on the part of the defendant by John C. Spooner one of his attorneys.
William W. Watson, is sworn and examined as a witness for the defendant.
Charles J. Martin, " " " " " " " " " "
Samuel Harriman, " " " " " " " " " "
E. E. Blanding, " " " " " " " " " "
Louis Hospes, " " " " " " " " " "
Andrew Schow, " " " " " " " " " "

And afterwards, and on the ninth day of said term, the following proceeding, among others, was had, viz:

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

This cause coming on to be further heard, the jury heretofore impannelled and sworn herein, being called, came. E. E. Blanding. is recalled and further examined as a witness for defendant.
James H. Spencer, is sworn and examined as a witness for defendant.
Thomas Dunn, " " " " " " " " " "
Ivory E. McKusick, " " " " " " " " " "
E. W. Durant, " " " " " " " " " "
Samual Harriman is recalled and further examined as a witness for defendant.

And here the defendant rests his case.

29 And on the tenth day of said term the following proceeding, among others, was had, viz:

FREDERICK SCHULENBERG ET AL.
vs.
ANDREW SCHOW.

This cause coming on to be further heard, and the jury, heretofore impannelled and sworn herein, being called, came.
Andrew Schow, is recalled and examined as a witness for the plaintiff.
And here the plaintiff rests his case.

J. B. Brisbin, esq., sums up for the plaintiffs.
C. K. Davis, esq., sums up for the defendant.
Charge is given the jury by the court, and they retire in charge of an officer duly sworn and qualified to attend them, to consider of their verdict; and, on being returned into court, they present their verdict to the court in the following words and figures, viz:
We, the jury, find the issues for the defendant; that he is entitled to recover the property, and to a return of the property replevied; and that the value of such property is the sum of sixteen thousand eight hundred and nine $\frac{87}{100}$ dollars.

And afterwards, to wit, on the 15th day of said term, and on the 3d day of July, A. D. 1872, the following proceeding, among others, was had, viz:

30 FREDERICK SCHULENBERG, ADOLPH Boeckler, and Louis Hospes, partners, as Schulenberg Boeckler & Co.
vs.
SAMUEL HARRIMAN.

The jury before whom this action was tried having found a verdict

for the defendant, that he is entitled to the property replevied and to a return thereof, and that the value of said property is the sum of sixteen thousand eight hundred and nine $\frac{87}{100}$ dollars, and the defendant having waived all damages for the detention of said property pending the suit:

It is by the court ordered and adjudged that the defendant do have and recover of and from the plaintiffs the possession of the property described in the complaint herein, to wit, all those certain pine logs described as follows, to wit: Eight hundred and fifty-one thousand six hun dred and eleven feet, board measure of logs marked (called, severally, Y girdle K 20, and Y girdle K 15,) also, eight hundred and twenty-nine thousand three hundred and eighty-six feet of logs marked (called hook Y diamond,) or the sum of sixteen thousand eight hundred and nine $\frac{87}{100}$ dollars, the aforesaid value thereof, in case a return of said property cannot be had; and also that the defendant do have and recover of and from the plaintiffs his costs by him in and about his suit in this behalf expended, to be taxed, and that the defendant have execution therefor.

Judgment record signed this 3d day of July, A. D. 1872.

H. E. MANN, *Clerk.*

31 And on the same day the said 3d day of July, A. D. 1872, the plaintiff', by their said attorneys, presented their bill of exceptions to the court, which was duly signed, sealed, and allowed, and is in the words and figures, following, viz:

32 United States circuit court, district of Minnesota.

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

ANDREW SCHOW
vs.
SAMUEL HARRIMAN.

These cases came on for trial at the June, 1872, term of said court, were consolidated by order of court, by consent of counsel duly given, and were tried together by one jury.

And the plaintiffs introduced testimony tending to support the allegations of their complaints, which testimony consisted of a stipulation, of which Exhibit A, hereto annexed, is a copy.

The plaintiffs thereupon rested.

The defendant then, to maintain the issues on his part, offered evidence, which was received, which tended to show that, long before the accrual of the causes of action or defense herein, the State of Wisconsin accepted the grants of land hereinafter mentioned; which evidence plaintiffs objected to as improper and immaterial, and not admis-
33 sible under the pleadings. Overruled, and exception for plaintiffs.

The defendant then introduced competent testimony, which tended to prove that, ever since March 5th, 1869, he has been the agent of the State of Wisconsin, and has had authority from it to preserve and protect the timber growing and being upon its lands, granted by the

United States to said State to aid in the construction of railroads, by acts of Congress, approved June 3, 1856, and May 5th, 1864, according to his best discretion, under the laws of said State; said testimony also tended to prove that the seizure mentioned in Exhibit A by him of said property, was the seizure and possession of the defendant, on account of which plaintiffs brought this action; and that such seizure and possession of the defendant were done and had under the aforesaid agency and authority, conferred upon him by the State of Wisconsin.

Same objection & ruling.

And defendant introduced maps of the location of the road mentioned in said acts of Congress, and certified lists of the lands from the U. S. to Wisconsin, which tended to show that the land on which the logs in suit were cut were embraced within said grant, maps,
34 location, and certified lists; to which plaintiffs objected for that it was inadmissible under the pleadings and stipulation, and on the further ground that the grant to Wisconsin had reverted to the U. S., because no part of said road had been built—as was admitted on the trial—which objection was overruled, and plaintiffs excepted. And the defendant also introduced testimony which tended to prove that the logs mentioned in the complaint were, during the logging season of 1870–71, cut on and removed, by plaintiffs, from said railroad lands of the State of Wisconsin; that they were floated, from the places where they were cut, down the logging streams and down the river St. Croix, into the boom at Stillwater, Minnesota, and were there, by the plaintiffs, prior to seizure by defendant, intermingled and indistinguishably confused with other logs of the same character and marks, to the number of some millions of feet, belonging to the plaintiffs; so that the particular logs cut on said lands could not be distinguished from logs which were cut on other lands. The evidence tended to show that when defendant seized these logs, and when plaintiffs replevied, the said boom was two and one-half miles long and from one-half to three-fourths of a mile wide, and then contained some three hundred millions of
35 feet of pine logs. The logs in suit were pine logs. The evidence also tended to show that the logs in suit were, with some millions of feet of other logs of like character and marks, scaled to and came into the possession of the plaintiffs, in the Stillwater boom, on the said St. Croix River, where they were, as aforesaid, confused with other logs; that defendant, acting under said agency and authority, seized said logs in said boom, and that the plaintiffs replevied them from him, in this suit, in said boom.

The defendant, besides, introduced other testimony, which tended to show that the logs in suit were never redelivered to the defendant after plaintiffs replevied them in this action; and there was also testimony tending to show that defendant demanded the logs of the plaintiffs before he seized them, and that plaintiffs refused to deliver the same.

The defendant then rested.

And the plaintiffs thereupon offered in evidence chapter 230 of the private and local laws of Wisconsin, approved March 5th, 1857, and chapter 290 of the private and local laws of Wisconsin, approved March 6th, 1857; and chapter 207 of the private and local laws of Wisconsin, approved March 10, 1869; and chapter 500 of the private and local laws of Wisconsin, approved March 16th, 1870—

Which, by agreement of parties, are a part of this record. The
36 said laws were then read in evidence, and, it being admitted that no part of said railroad had ever been constructed, the court thereupon ruled that, notwithstanding said acts, the legal title to the

lands granted to the State, by the aforesaid acts of Congress, still remained in the State of Wisconsin; to which decision the plaintiffs excepted.

It is hereby stipulated by the parties to each of the above-entitled actions respectively, that quiet and peaceable possession in each of said actions on the part of the plaintiff or plaintiffs therein, as the case may be, at the time the defendant therein went into the possession of the logs in dispute in each of said actions, respectively, is hereby admitted, and that such possession shall be conclusive evidence of title to said logs in said plaintiff, or plaintiffs, as the case may be, for the purposes of said actions, as against any and all evidence that may in any of said actions, be offered of title to said logs in a stranger, unless said defendant shall connect himself by competent evidence with such title last mentioned, by agency or authority in himself, said defendant.

And it is hereby further stipulated and agreed by and between
37 the said parties that one of said actions shall be tried as a test case, and shall be selected by the said defendant by notifying said plaintiffs' attorneys within ten days after the service upon said defendant of the complaints in said actions of said defendant's election.

And it is further stipulated that if it shall appear from the record that any of the logs aforesaid, if cut upon railroad lands were cut upon what are known as the fifteen-mile limits, that then the said defendant shall, within said time and upon like notice, elect to try another of said actions as a test case involving logs so appearing to be cut, upon said limits, if cut upon railroad lands; and it is hereby further stipulated, that no other of said actions shall be tried until such test case, or cases, as the event may be, shall be tried and finally determined, as well in the appellate court or courts to which the same may be removed by appeal, as in the court where the same shall first be tried.

It is hereby further agreed on the part of the plaintiff and plaintiffs, as the case may be, in each of the above-entitled actions, that the seizure of the property in each case by the defendant, was, so far as the
38 manner of making the same is concerned, valid and legal in all respects, as though the same had been made under and by virtue of legal proofs; and it is hereby stipulated on the part of the plaintiff and plaintiffs in each of said actions, that no question shall be made as to the validity of such seizure, so far as the manner of making the same is concerned.

BRISBIN & PALMER,
W'M M. McCLUER, *Pl'ffs Att'ys.*
C. K. DAVIS,
BAKER & SPOONER,
H. A. WILSON, AND
GLOVER, AMTON & MATHEWS,
Def't Att'ys.

United States circuit court district of Minnesota.

ANDREW SCHOW
vs.
SAMUEL HARRIMAN.

SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

The annexed stipulation having been entered into before issue
39 was joined in said court, it is hereby renewed unto said cases,

which are now duly at issue in said court. It is to be used as evidence in the trial, anything to the contrary in the pleadings notwithstanding. It is also applicable in the same manner to the several cases which are also now pending in said court, in which Martin Moore, S. L. Cowan, et al., Smith Ellison, John G. McKenzie, B. Comstock, & Walker et al., are plaintiffs, against S. Harriman.

Dated April 13th, 1872.

DAVIS & O'BRIEN,
Att'ys for Def'ts.
BRISBIN & PALMER AND
W'M M. McCLUER,
Att'ys for Pl'ffs.

And thereupon plaintiffs required the court to charge:

1st. That unless the jury find from the evidence that the identical property which is the subject-matter of these actions, was, at the time the same was taken by the defendant, the property of the State of Wisconsin, and that defendant has connected himself with the State of Wisconsin, as agent, with authority to act for the State of Wisconsin, and that he took possession of said logs as the agent of said State, they must find for the plaintiffs.

40 2d. That, under the stipulation of the parties in these actions, no claim can be made by the defendant for any wrongful or unlawful taking or intermingling of this property at any time or place prior to its taking by defendant in the county of Washington, in June, 1871, as shown by the pleadings and proof.

Which said instructions and each of them the court refused to give to the jury as so requested; to which ruling the plaintiffs, by their counsel, then and their excepted.

The court then charged and instructed the jury:

1. This is an action of replevin. It is admitted by counsel that the plaintiffs obtained possession of the logs under the writ of replevin. It has been stipulated by parties that plaintiffs were in the quiet and peaceable possession of the logs before defendant seized them, and that defendant's seizure thereof, as to the manner of making it, was legal and valid.

2. The stipulation as to the plaintiffs' "quiet and peaceable possession the logs," is not an admission by the defendant that the plaintiffs' possession was rightful, or that the plaintiffs were the owners. These questions are left open by the stipulation, and are to be decided by the jury, under the instructions of the court.

3. The presumption arising from the stipulation entered into
41 between the parties, is that the logs were the plaintiffs' property. It makes out a prima-facia case for the plaintiffs. That is its only effect. It throws the burden of proof on the defendant to show title or right of possession in himself. The defendant, as the duly commissioned agent of the State of Wisconsin, claims that the logs in dispute were cut on the railroad lands granted by Congress to the State of Wisconsin, by act of Congress, of June 3, 1856. (U. S. Statutes at Large, 20.)

4. The legal title to these lands and to logs cut thereon without authority, is in the State of Wisconsin. Evidence has been offered by the defendant with a view to show that the plaintiffs cut logs on said lands, and that they were mingled with a large quantity of other logs, having

the same marks, belonging to the plaintiffs, and were in this condition while in the boom at Stillwater, and when seized by the defendant.

5. The plaintiffs insist that the defendant cannot recover, except so far as he traces and identifies each log, for which he asks a verdict, to have been cut upon the said railroad lands.

6. However it might be at common law, we instruct you that under the legislation of this State, when the logs were seized by the de-
42 fendant and replevined by the plaintiffs, (Revised Statutes of Minnesota, page 250, and the decisions of the courts in the lumber regions, applicable to such controversies,) that it is not necessary that the defendant should trace and identify each log, that is, if you are satisfied from the evidence that the plaintiffs cut logs on the said railroad lands, without authority from the State, and that these logs thus cut, were driven by the plaintiffs down the river into the boom at Stillwater, in this State, and mingled with other logs belonging to them, bearing the same marks, so that the two classes of logs could not be distinguished, then the defendant has at least a right, especially after demand of the plaintiffs, to get from that boom a quanti' of said logs equal to those which he shows were cut by the plaintiffs on said railroad lands.

7. If you find for the defendant, the measure of his damages (under the statute of the State relating to replevin) will be the value of the logs thus traced by the defendants from the railroad lands into the boom at Stillwater, and of which defendant was in possession (as stipulated) when this suit in replevin was commenced.

43 The plaintiffs, by their counsel, also then and there excepted to that portion of the charge of the court, marked "6," and to each and every part thereof.

And, inasmuch, as the several matters hereinbefore recited, do not appear by the record, the said counsel, for said plaintiffs, did then and there propose their aforesaid exceptions to the opinions and decisions of said court, and required that the seal of said court be put to this bill of exceptions in accordance with the statutes in such case made and provided, and thereupon the said justices at the request of said counsel for plaintiffs, did put their seal to this bill of exceptions pursuant to the aforesaid statutes, on the 3d day of July, 1872.

SAM. F. MILLER. [SEAL.]
JNO. F. DILLON. [SEAL.]

44 And afterwards, to wit, on the 14th day of July, A. D. 1872, the defendant's costs were duly taxed, by the clerk of this court, at the sum of four hundred and sixty-three dollars and ninety cents.

And afterwards, to wit, on the 17th day of August, A. D. 1872, on application of the plaintiffs, by their attorneys, a writ of error was allowed by the Hon. John F. Dillon, judge of said court, which allowance is in the words and figures following:

In the circuit court of the United States, district of Minnesota.

FREDERICK SCHULENBERG ET AL.
vs.
SAMUEL HARRIMAN.

The plaintiffs in this action, having applied for a writ of error from the Supreme Court of the United States, and having presented their

bond, which has been approved by me, I hereby allow such writ of error.

Dated this 17th day of August, A. D. 1872.

JNO. F. DILLON,
Judge U. S. Circuit Court, 8th Dist.

JOHN B. BRISBIN & E. C. PALMER,
Att'ys for Plaintiffs in Error.

45 UNITED STATES OF AMERICA:

Circuit court of the United States for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

I, H. E. Mann, clerk of said court, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing is a true and complete transcript of the records, process, pleadings, orders, final judgment, and bill of exceptions, and all other proceedings in said cause, as appears from the original records and files of said court and I further certify and return that I have annexed to said transcript and do hereby return therewith the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said court, at St. Paul, in the district aforesaid, this 14th day of November, in the year of our Lord one thousand eight hundred and seventy-two and of the Independence of the United States the ninety-seventh year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsement on cover:) No. 609. Frederick Schulenberg, Adolph Boecklor, & Louis Hospes, partners, as Schulenberg, Boeckler & Company, plaintiffs in error, vs. Samuel Harriman. Minnesota C. C. U. S. Filed 23 December, 1872.